

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THOMAS O. BUTTS,	§
	§ No. 219, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0606015587
	§
Plaintiff Below-	§
Appellee.	§

Submitted: June 3, 2010
Decided: June 29, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 29th day of June 2010, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Thomas O. Butts, filed an appeal from the Superior Court's April 1, 2010 order denying his motion for postconviction relief. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's judgment on the ground that it is

manifest on the face of the opening brief that the appeal is without merit.¹

We agree and affirm.

(2) The record reflects that Butts was indicted in July 2006 on several drug charges. On March 20, 2007, he pleaded guilty to two of those charges—Trafficking in Cocaine and Maintaining a Dwelling for Keeping Controlled Substances. In exchange for the guilty plea, the State dismissed the remaining charges. Butts was sentenced to a total of twelve years of Level V incarceration, to be suspended after four years for decreasing levels of supervision. Butts did not file a direct appeal.

(3) In his postconviction motion filed in the Superior Court, Butts asserted three claims: a) ineffective assistance of counsel; b) actual innocence; and c) a Brady violation. In this appeal, Butts claims only that his attorney provided ineffective assistance by failing to move to suppress the drug evidence seized from his residence during an administrative search by Operation Safe Streets.² Specifically, he argues that his plea was involuntary because of that error on the part of his counsel, thereby overcoming the time bar to his postconviction claim.³

¹ Supr. Ct. R. 25(a).

² His other two claims are deemed to be waived. *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

³ Super. Ct. Crim. R. 61(i)(1) and (5).

(4) There is no evidence in the record before us demonstrating that Butts' guilty plea was involuntary. To the contrary, the Superior Court's order reflects that the judge engaged in an extensive colloquy with Butts prior to the entry of his plea and confirmed that Butts fully understood the guilty plea form and plea agreement, had discussed the plea with his counsel, understood the range of sentences that could be imposed, had not been coerced into pleading guilty, and was satisfied with his counsel's representation. In the absence of clear and convincing evidence to the contrary, Butts is bound by the sworn statements he made to the judge at the plea hearing.⁴ Moreover, Butts' voluntary guilty plea constitutes a waiver of his right to challenge any alleged errors or defects occurring prior to the entry of the plea.⁵ Accordingly, we conclude that the Superior Court properly denied Butt's postconviction motion.

(5) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

⁴ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

⁵ *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2003).

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice